IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

Batliboi & Company Ltd. & another Vs. Bhartiya Krishi Anusandhan Parishad

S.B. CIVIL FIRST APPEAL No.75/1988 against the judgment & decree dated dated 17.5.1988 passed by the ADJ No.1, Jaipur city, Jaipur in Civil Suit No.19/1982.

Date of Judgment :: October 13, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

None present for the appellants.
Mr. Ashok Mehta with Mr. Vigyan Shah for the respondent.

BY THE COURT:

1. Heard learned counsel for plaintiff respondent, as no counsel has been appeared on behalf of defendant appellant even after waiting for sufficient time on two consecutive days.

2. This appeal is directed against the judgment and decree dated 17.5.1988 by the learned ADJ No.1, Jaipur City, Jaipur in Civil Suit No.19/1982.

3. The plaintiff Bhartiya Krishi Anusandhan Parishad filed the suit against the defendant Company M/s. Batliboi & Company Limited for recovery of advance

payment made by it against the supply of submersible pumps by the defendant company to the plaintiff for installation in the four wells dug by the plaintiff for supply of water. The plaintiff came with the case that since the pumps supplied by the defendant company were of bad quality and could not work, the defendant company was liable to pay back the advance amount paid to them. The defendant company, the present appellant, contested the said suit and submitted before the learned trial court that since the development of the wells was not properly done by the plaintiff nor the 'well data' were supplied to the defendant company, therefore, the defendant company could not be held responsible for non working of the submersible pumps supplied by it and thus the suit deserved to be dismissed.

4. The learned trial court framed various issues on the basis of pleadings of the parties and whereas plaintiff submitted three witnesses in support of its case, the defendant produced two defence witnesses and various documentary evidence was also produced before the learned trial court.

5. The learned trial court after appreciating the evidence on record decided all the issues in favour of the plaintiff and held while deciding issue No.2 that the plaintiff had supplied “well data” to the supplier

defendant and the defendant also supplied these submersible pumps in question with relevant guarantee and since the pumps never worked in the said four wells and not only the plaintiff had developed these wells properly but had spent further amount for further development as suggested by the defendant company. The issue No.3 was also decided in favour of the plaintiff and the learned trial court held that the sum of Rs.29,764.50 paid in the month of January, 1977 against the 4 pumps was liable to be refunded back to the plaintiff as the pumps in question were returned by the plaintiff to the defendant supplier in the month of December, 1976.

6. The issue No.5 regarding counter claim by the defendant company of Rs.6558/- was also rejected by the learned trial court holding the same to be time barred. The defendant company claimed the said amount towards remaining 10% payment against the supply of said 4 pumps. The issue No.6 regarding the suit being barred by limitation was also decided in favour of the plaintiff because the learned trial court held that vide Ex.10 the defendant company had come up and had suggested to the plaintiff to instal pumps of other make by the company and since the suit was filed within three years of the said date of Ex.11 dated 19.11.1977, the suit was held to be within limitation and thus the learned trial court directed a decree to be drawn for recovery of

Rs.42,858.50 and Rs.29,764.50 along with interest at the rate of 12% per annum from 15.9.1980.

7. Mr. Ashok Mehta learned counsel appearing for the plaintiff respondent drew the attention of the Court towards Ex.A.3, the letter dated 12.12.1974 written on behalf of the plaintiff to the defendant company, the present appellant in which it was clearly stated that the defendant company, "I am directed to request you to kindly advise us about the installation of supply of such submersible pumps as be found suitable." Along with the said letter "well data" was also supplied to the defendant company. On the strength of these documents, learned counsel for the plaintiff submitted that since the defendant company was an expert of manufacture and supply of such submersible pumps and the purchase order was given subject to these conditions that the pumps be supplied to plaintiff if only they are suitable in view of well data supplied to them but since the respondent company supplied defective submersible pumps which could never work and made operational in the wells of the plaintiff, the plaintiff was entitled to the refund of the advance paid by the plaintiff for supply of such submersible pumps. These documents have been proved by Pw.1 Kashmiri Lal Aneja, the Administrative Officer of the plaintiff as also Pw.2 Radha Mohan. The defendant's witness Dw.1 B.S. Chauhan working as Service Engineer in

the defendant company also admitted in his statement recorded by the learned trial court that along with the letter Ex.A.3 the plaintiff had supplied the "well data" and in response to which quotations were sent by the defendant company. He also stated that his company had supplied similar pumps to PHED Department also but there was no complaint from that department about these pumps. He admitted in his cross examination that for installation of the pumps in question in the wells of the plaintiff, he had visited the site 4-5 times and he also admitted that after verifying the sent articles with the "well data", they had advised the plaintiff company that these pumps would be suitable.

8. Learned counsel for the plaintiff respondent also brought to the notice of the Court Ex.A.7, the letter dated 15.9.1977 written by the defendant company in which the defendant company had clearly suggested the installation of different kind of pumps namely egecto pumps in place of submersible pumps but since the defendant company were not marketing egecto pumps they suggested to the plaintiff to go in for 'vashp' or 'Myers' make pumps to suit the requirement of the plaintiff and according to the learned counsel, this clearly established that the defendant had virtually admitted that the submersible pumps supplied by it were not workable in the conditions of wells developed by the

plaintiff and since the pumps in question had been returned to the defendant company, the plaintiff was entitled to recover back the advance money paid to the defendant company for the same and thus the decree was justified.

9. Having considered the submissions of the learned counsel for the plaintiff respondent, this Court is of the opinion that there is no force in the present appeal of the defendant and the same deserves to be dismissed.

10. The learned trial court in the impugned judgment has appreciated all the aforesaid relevant evidence and came to the conclusion that after supply of relevant "well data" by the plaintiff the defendant company supposedly an expert in the field had not only advised the plaintiff company to purchase its submersible pumps but had installed the same in the wells developed by the plaintiff and upon its suggestion, the plaintiff undertook further development and digging of the wells deeper as suggested by the defendant company, spending additional amount for the same but yet the submersible pumps supplied by the defendant company failed to work successfully in those wells and, therefore, the plaintiff company was held entitled to the refund of advance money paid by it.

11. In the opinion of this Court and from a bare perusal of the correspondence placed on record and proved by the plaintiff from Ex.A.3 to A.11 clearly establishes that the plaintiff had not withheld any information or "well data" from the defendant company and defendant company had supplied defective pieces of submersible pumps to the plaintiff. Since despite all efforts as suggested by the defendant company failed to make these pumps operational and the defendant company vide Ex.A.7 clearly even admitted that these pumps were not suitable and, therefore, egecto pumps be installed in place of such submersible pumps, it is beyond doubt that the plaintiffs were not at fault and the pumps supplied by the defendant company were not right kind of pumps which could be used in the wells of the plaintiff, therefore, the learned trial court has rightly decreed the suit and directed the refund of the amount in question with interest which calls for no interference by this Court in the present appeal.

12. The present appeal is found to be devoid of merit and the same is hereby dismissed. No order as to costs.

(Dr.VINEET KOTHARI),J.

VS/